IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 103 OF 2006

Deepak B. Sekhri ..Appellant

versus

Municipal Corporation of
Greater Bombay ..Respondents

Mr. A. B. Vagyani for the Appellant.

Mr. J. Xavier for the Respondents.

CORAM : A.M. KHANWILKAR, J.
DATE : 1ST MARCH,2006

P.C. :

1. Heard counsel for the parties.

2. I see no infirmity in the view taken by the court below. In so far as merits of the case is concerned, the court below has discussed the evidence on record in paragraph 15 of the impugned judgment. It has noted that there is no document on record to prove the existence of the structure prior to the datum line. The plaintiff failed to produce City Survey Record or the Sanctioned Plan nor the plaintiff has examined the alleged landlord or any

other officer from City Survey Department to prove his case about existence of structure prior to datum line. No fault can be found with this inference drawn by the trial court on account of failure of the plaintiff to produce relevant evidence in support of his claim that the structure was in existence for a long time. If this finding is to be upheld the suit as filed by the plaintiff would necessarily fail.

3. Besides that, I am in agreement with the view taken by the trial court in paragraph 16 of the impugned judgemnt that the plaintiff did not bother to respond to the Show Cause Notice issued by the Corporation under Section 351 of the Act. The plaintiff did not give any information about his landlord or the owner of the suit premises so as to oblige the Corporation to issue notice to such persons. It is common ground that the plaintiff is in exclusive occupation and possession of the suit premises. The case of the Corporation is that of unauthorised construction of covering of the set back terrace by AC sheets on the 4th floor of the suit premises done by the plaintiff. For the nature of evidence that has come on record, the conclusion

reached by the trial court was inevitable. The suit has been rightly dismissed by the trial court. No interference is warranted. Hence, Appeal dismissed.

4. Counsel for the appellant submits that the appellant may be allowed to apply for regularisation of the unauthorised construction in accordance with the law. If such an application is made by the appellant to the Executive Engineer Building Proposals, City, the same be decided on its own merits in accordance with the law. It will be open to the Executive Engineer, Building Proposals, City, to reject the proposed application on the ground that prior approval of the owner of the suit structure is not furnished by the appellant, if that is the ground available for rejection of such an application. Suffice it to observe that the application for regularisation will be considered on its own merits in accordance with law. The respondent shall not precipitate the matter initially for a period of three weeks to facilitate the appellant to apply for regularisation of the suit structure. If no such application is received by the Executive Engineer, Building Proposals, City, within the specified time, it will be open to the

respondents to proceed against the suit structure in accordance with the law. However, if such an application is received in time, the Corporation to decide the same expeditiously, preferably within four weeks from its receipt and till such time no percipitative action in respect of the suit structure be taken.

1.3.2006 A. M. KHANWILKAR, J.